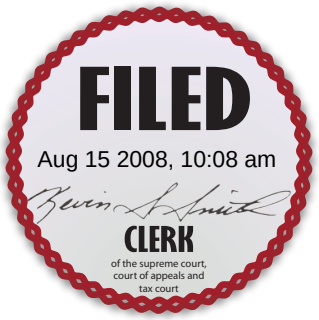

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IN THE
COURT OF APPEALS OF INDIANA

MAURICE L. BROWNLEE,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 20A05-0802-CR-68
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ELKHART CIRCUIT COURT
The Honorable Terry C. Shewmaker, Judge
Cause No. 20C01-0507-FA-00139

August 15, 2008

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Maurice L. Brownlee ("Brownlee") was convicted in Elkhart Circuit Court of Class A felony attempted murder and sentenced to a term of forty-two years in the Department of Correction. Brownlee appeals and presents the following issues:

I. Whether sufficient evidence was presented at trial to convict Brownlee of Class A felony attempted murder; and

II. Whether Brownlee's sentence of forty-two years is appropriate.

We affirm.

Facts and Procedural History

On May 13, 2005, at approximately 11:00 p.m., Johnny Parker ("Parker") attempted to collect a debt that Brownlee's uncle owed him. As Parker spoke to Brownlee's uncle, Brownlee drove up in a dark-colored vehicle that also contained his brother and other friends. Brownlee was angered by Parker's attempt to collect the debt from his uncle, so he confronted Parker. Parker punched Brownlee. Brownlee got up and continued to confront Parker. Parker struck Brownlee again and knocked him out for a few minutes.

After Brownlee recovered, he continued to accost Parker but then thought better and drove away in his vehicle. Parker rode his bicycle to his sister's apartment where he stayed for about thirty minutes before leaving for his aunt's house.

As Parker rode his bicycle from his sister's apartment to his aunt's house, he saw a dark-colored vehicle and thought that it contained his cousin as a passenger in the vehicle. He stopped, but then he recognized the car from his earlier confrontation with Brownlee. As the car pulled up next to him, he could see Brownlee driving with Mario Morris in the front passenger seat and others in the backseat. He also saw a shotgun that

Morris handed to Brownlee. Brownlee then asked Parker, "JP why did you do me like that?," pointed the shotgun at Parker and fired from a distance of three to five feet. Just before the gunshot, Parker had jumped from his bicycle and tried to run away. Brownlee's gunshot injured Parker's upper thigh and groin area. Brownlee left the scene.

Parker ran to his aunt's house where the police were called. When the police arrived, Parker told them that Brownlee had shot him. Parker was transported to the hospital and treated for very serious injuries that required surgery. At the hospital, Parker was interviewed by police and again identified Brownlee as the person who shot him. A few days later, Parker again identified Brownlee as the shooter. Additionally, the police received information from Shakita Jackson that Brownlee had admitted to shooting Parker.

On July 18, 2005, the State charged Brownlee with Class A felony attempted murder. After a trial that began on December 4, 2007, a jury found him guilty as charged. On January 3, 2008, the trial court sentenced him to forty-two years in prison. Brownlee appeals.

I. Sufficiency of the Evidence

Brownlee argues that the evidence at trial was insufficient to support his conviction for Class A felony attempted murder. His argument is two-fold. First, Brownlee asserts that Parker's uncorroborated identification evidence is insufficient because of inconsistencies in Parker's testimony and the circumstances surrounding the shooting. Second, Brownlee does not believe that the evidence showed the specific intent to kill.

When we review a claim of sufficiency of the evidence, we do not reweigh the evidence or judge the credibility of witnesses. Jones v. State, 783 N.E.2d 1132, 1139 (Ind. 2003). We look only to the probative evidence supporting the verdict and the reasonable inferences therein to determine whether a reasonable trier of fact could conclude the defendant was guilty beyond a reasonable doubt. Id. If there is substantial evidence of probative value to support the conviction, it will not be set aside. A single eyewitness's testimony is sufficient to sustain a conviction. Stewart v. State, 866 N.E.2d 858, 862 (Ind. Ct. App. 2007). Any inconsistencies in the identification testimony merely go to the weight of the evidence and it is the province of the jury to determine witness credibility and the weight given to evidence. Id. We do not reweigh the evidence or revisit questions of credibility when determining whether the identification evidence is sufficient to sustain a conviction. Id.

Brownlee's argument merely asks that we reweigh the evidence and determine the credibility of Parker's testimony. This we will not do. The evidence that is most favorable to the jury's verdict is Parker's testimony that Brownlee drove up next to him in a dark-colored vehicle, pointed a gun at him and shot him. Additionally, Shakita Jackson testified that Brownlee admitted to shooting Parker. While Brownlee may believe that doubt was created and that circumstances were not ideal for identification, the jury determined that sufficient evidence supported a finding that Brownlee shot Parker and we will not disturb that finding.

Next, Brownlee argues that the evidence did not support a finding of specific intent to kill. The trier of fact may infer intent to kill from the use of a deadly weapon in

a manner likely to cause death or great bodily harm. Bethel v. State, 730 N.E.2d 1242, 1245 (Ind. 2000) (Sufficient evidence has been found when a weapon has been fired in the direction of the victim.) Parker testified that Brownlee pointed the shotgun at him and fired from a range of three to five feet. Based on Parker's testimony and injuries, we conclude that the evidence was sufficient to support a finding of specific intent to kill.

II. Appropriateness of Sentence

Brownlee also argues that his forty-two year sentence was inappropriate. Appellate courts have the constitutional authority to revise a sentence if, after consideration of the trial court's decision, the court concludes the sentence is inappropriate in light of the nature of the offense and character of the offender. Ind. Appellate Rule 7(B) (2007); Marshall v. State, 832 N.E.2d 615, 624 (Ind. Ct. App. 2005), trans. denied. "[A] defendant must persuade the appellate court that his or her sentence has met the inappropriateness standard of review." Anglemyer v. State, 868 N.E.2d 482, 494 (Ind. 2007). Additionally, "[s]entencing decisions rest within the sound discretion of the trial court and are reviewed on appeal only for an abuse of discretion." Id. at 490.

Brownlee asks that we reweigh the aggravating and mitigating factors. This argument has been rejected by our Supreme Court. Anglemeyer v. State, 868 N.E.2d 482, 491 (Ind. 2007) ("Because the trial court no longer has any obligation to 'weigh' aggravating and mitigating factors against each other when imposing a sentence, unlike the pre-Blakely statutory regime, a trial court can not now be said to have abused its discretion in failing to 'properly weigh' such factors.")

The sentence is not inappropriate in light of the nature of the offense and character of the offender. Here, the nature of the offense is troubling. In response to a supposed slight towards a family member, Brownlee escalated the conflict to the point where he fired a shotgun at the victim from three to five feet away. Brownlee had ample opportunity to avoid the situation but rather appears to have sought out Parker in an attempt to seek vengeance.

As to the character of the offender, Brownlee has a juvenile and adult criminal history with convictions for having an altered license plate, failure to appear, misdemeanor battery, possession of marijuana, and resisting law enforcement. Brownlee has violated probation on a number of occasions and was on probation at the time of the offense. Additionally, he has a history of illegal drug usage and failure to pay child support.

Accordingly, we conclude that Brownlee's sentence is not inappropriate based on the nature of the offense and the character of the offender.

Conclusion

The evidence at trial is sufficient to support Brownlee's conviction for Class A felony attempted murder. Brownlee's sentence is not inappropriate based on the nature of the offense and character of the offender.

Affirmed.

BAKER, C.J., and BROWN, J., concur.